

Final
Report

Improper Procurement of Gateway Signage

by the

Wheaton Urban District

Report # OIG-18-001

June 19, 2017

Montgomery County Maryland
Office of the Inspector General



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Report
in Brief

Improper Procurement of Gateway Signage

by the *Wheaton Urban District*

June 19, 2017

What We Found

A Wheaton Urban District procurement of a \$38,684 monument-style sign for the gateway entrance to Wheaton, paid for in June 2015 but not delivered as of February 2017 (the date of the vendor's confirmation letter to us), represents a wasteful and unnecessary expenditure of taxpayer dollars. In addition, this procurement demonstrated:

- Paying for goods not received;
- Paying different prices for goods based on the same quotation;
- Circumventing requirements for procurements greater than \$100,000;
- Splitting a procurement and charging an inappropriate account code to avoid detection;
- Mismanagement of some public funds; and
- Ambiguous public entity procurement guidance in County regulations and guidelines

What We Recommend

We recommend that Management hold WUD managers accountable for failing to observe the County's procurement regulations and guidelines and take appropriate remedial actions. We recommend that WUD managers also be held accountable for mismanagement of public funds, again taking appropriate remedial actions. We also recommend that Management provide specific and adequate guidance relating to public entity procurement regulations and guidelines for departments and agencies, to ensure they observe the intent of County public entity purchasing laws.

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Improper Procurement of Gateway Signage

by the Wheaton Urban District

Introduction

In June, 2015, the Wheaton Urban District (WUD) paid \$121,541 for three monument-style signs for the gateway entrances to Wheaton (the "Gateway Signs"). One of the three Gateway Signs, for which WUD paid \$38,684 in May 2015, had not been received as of February, 2017 (the date of the vendor's confirmation letter to us).¹ Indeed, the unassembled sign was, as of that date, stored in the sign fabrication and installation firm's (the "Sign Fabricator") warehouse. This purchase and deferred delivery represents a wasteful expenditure of taxpayer funds. Facts surrounding the purchase clearly indicate that a more appropriate use of currently appropriated WUD funds would have been for current program needs rather than for the purchase now of signage for installation at an unidentified location at some unknown future date.

The purchase of the Gateway Signs did not follow the procurement regulations set forth in the Code of Montgomery County Regulations (COMCOR), nor did it follow procedures set forth in the Office of Procurement's *Procurement Guide (Procurement Guide)*. The procurement was completed without contract, insurance, and review and approval by the Offices of the County Attorney and Procurement.

WUD paid for the Gateway Signs by submitting three payment transactions that would not normally be reviewed for propriety by the Office of Procurement nor the Accounts Payable section of the Department of Finance. The largest (\$101,543) of the three installment payments was made as a reimbursement to a Public Entity, Bethesda Urban Partnership, Inc. (BUP).

Background

Urban districts exist within the Montgomery County business districts of Wheaton, Bethesda, and Silver Spring. The purpose of these urban districts is to provide the services needed to maintain existing streetscape and streetscape amenities, and provide additional streetscape amenities and facade improvements; to promote and program public interest activities; to monitor activities to

¹ The OIG received a letter that confirmed that as of February 15, 2017, the Sign Fabricator still held one sign in storage at its facility awaiting delivery instructions from WUD.

enhance the safety and security of persons and property in public areas; and to provide any capital project that promotes the economic stability and growth of the district.²

WUD is a County government organizational unit operating within the Community Engagement Cluster with an approved budget of \$2,105,023 for FY2017.

BUP was created as an urban district corporation in 1993. With an approved budget of \$3,184,792 for FY2017, BUP serves as the commercial district management authority for Bethesda.³ An urban district corporation created pursuant to the Montgomery County Code (County Code) is not within the Executive or Legislative branches of County government, and is an independent public instrumentality separate and distinct from the County.⁴

An urban district corporation may provide any authorized service to another Corporation or urban district.⁵ The requirements of the County's Procurement law do not apply to procurements made by an urban district corporation.⁶

Findings & Recommendations

Waste of Funds, Improper Procurement

Finding 1: The Wheaton Urban District wasted County funds in its acquisition of monument-style gateway signs and did not observe regulations for procurements with value exceeding \$100,000.

In 2015, the Wheaton Urban District (WUD) made a \$121,541 wasteful and improper procurement of three Gateway Signs for the entrances to Wheaton⁷ by:

- Wasting \$38,684 for an unneeded sign;
- Paying for goods not received;
- Paying different prices for goods based on the same quotation;
- Circumventing requirements for procurements greater than \$100,000; and
- Splitting a procurement and charging an inappropriate account code to avoid detection.

² County Code §68A(3)

³ County Code §68A(9)

⁴ County Code §68A(9)

⁵ County Code §68A(9)

⁶ County Code §68A(11)(d)(1)

⁷ Invoice #Deposit dated 2/13/15 for \$9,999 deposit toward 2 signs valued at \$77,369.36, and invoice #Deposit dated 6/3/15 for \$9,999 deposit toward 1 sign valued at \$37,324.68.

Wasting \$38,684 for an unneeded sign

The procurement and deferred installation of the third Gateway Sign, valued at \$38,684 and paid for in June 2015, represents a wasteful and unnecessary expenditure of taxpayer dollars. There is an appearance that WUD purchased the third Gateway Sign only because there were funds available to do so.

We found little documentation or analysis as evidence of the necessity for monument-style Gateway Signs, nor did we find evidence of any need for more than two signs. Discussion among members of the WUD Advisory Committee prior to procurement had focused on two signs.

Available funds were wasted to procure the third sign. The fact that the third Gateway Sign had not been installed 21 months after payment because a site had not been identified provides evidence that the Gateway Sign was not needed at the time of purchase.

Paying for goods not received

Although paid for, in full, in June 2015, a Gateway Sign purchased by WUD at the cost of \$38,684 had not been delivered or installed as of February 15, 2017 (the date of the Sign Fabricator's confirmation letter to us). WUD had not identified a location for this sign at the time of its purchase.

Invoice documents indicated the existence of three Gateway Signs. One invoice indicated placement of a Gateway Sign at the corner of Georgia Avenue and Veirs Mill Road (Georgia Sign). A second invoice indicated placement of Gateway Signs at the corner of University Boulevard and Veirs Mill Road (University Sign), and at the corner of Georgia Avenue and Veirs Mill Road (the same location as the location of the sign in the first invoice).

December 2014 WUD Advisory Committee meeting minutes and OIG-obtained photographs of the two intersections indicate the presence of only two signs (see Image 1).

We asked whether WUD had been billed twice for the Georgia or University Signs, or had a third sign been commissioned (whose location was not disclosed). We were advised that "there are a total of three signs. The third sign has been semi-fabricated (remainder is done on site), and is currently at the [Sign Fabricator's]

Image 1

WUD Gateway Sign Location 1:

Georgia Avenue @ Veirs Mill Road



Source: Google Street View © 2017: Image Oct 2015

WUD Gateway Sign Location 2:

University Boulevard @ Veirs Mill Road



Source: Google Street View © 2017: Image Oct 2016

facility. It has not been installed as we still need to identify a location.” “The understanding was that we'd purchase up to three based on our budget and what the cost was for each sign, since for a project like this there is no price break based on quantity.”

COMCOR holds the using department responsible for certifying that the Sign Fabricator performed in accordance with the contract requirements and had earned all contract payments.⁸ Payment was to be made only after goods had been delivered and inspected by the using department, appeared to be acceptable, and an invoice had been submitted for payment in accordance with the contract.⁹ We did not find evidence that the Sign Fabricator performed in accordance with the contract requirements, thus earning all contract payments.

Although procurement regulations allow advance payments, their use requires that the Director of Finance and the Director, Office of Procurement (OoP) determine that a unique circumstance exists requiring such use.¹⁰ We found no evidence to support that such a determination for advance payment had been made.

Paying different prices for goods based on the same quotation

The proposal and invoice documents that we reviewed provide evidence that WUD paid different prices for the three Gateway Signs.

The Sign Fabricator's initial proposal in December, 2013 quoted \$38,684.50 for the single Georgia Sign. However, when the Sign Fabricator submitted its invoices for deposit and balance due for the Georgia Sign, the cost was stated as \$37,324.60 – a \$1,360 cost reduction. With an invoice cost that differs from the initial proposal and the absence of a contract or purchase order, the Sign Fabricator's requested cost at completion of work would set the cost for like signs.

We asked WUD for a copy of the proposal for the second Georgia Sign and the University Sign and were advised “the initial quote/proposal was for one sign. Two large signs are exactly double this amount.” At twice the reduced cost, the second and third signs should have cost \$74,649.20.

When submitted, however, the Sign Fabricator's deposit invoice and final invoice both set the cost as \$77,369.36.

We asked WUD to explain the difference in pricing, and were advised “the [extra] cost was for the removal and disposal of two existing signs.” We noted, however, that the lesser-cost invoice references the December, 2013 proposal. That proposal included “removal and disposal of existing sign” within the cost quotation.

⁸ COMCOR 11B.00.01.05.4.3

⁹ COMCOR 11B.00.01.08.1.2

¹⁰ COMCOR 11B.00.01.08.4; Regulation requires that the advance payment is in the best interest of the County. Advance payment is allowed without required Finance/Procurement approval when the payment is part of a commercially acceptable practice as in the case of equipment and software maintenance, periodical subscriptions, registrations, travel, catering service, licensing fees, and insurance premiums.

COMCOR directs that WUD may not certify the payment of invoices that contain charges against a contract that differ from the contractor performance that was rendered.¹¹ The *Procurement Guide* directs the contract administrator to enforce this requirement by reviewing and only approving for payment those vendor invoices for which the contractor has adhered to the specifications, terms, conditions and price written in the contract.

Had WUD observed COMCOR and OoP *Procurement Guide* guidance, WUD's contract administrator should have detected and resolved the \$2,700 variance with the Sign Fabricator.

Circumventing requirements for procurements greater than \$100,000

WUD is a County department subject to the County's purchasing laws and regulations, but its \$121,541 procurement of three Gateway Signs for the entrances to Wheaton was neither processed through the Office of Procurement¹² nor compliant with the County's purchasing regulations.

WUD possessed documentation in February 2015 that indicated the procurement of three signs would exceed \$100,000. A December 2013 proposal established \$38,684 as the cost for the single Georgia Sign. The cost in this proposal was used to set the cost for the procurement of two additional signs – the University Sign and the second Georgia Sign.¹³

Purchasing regulations require that goods or services valued at \$100,000 or more be procured by County departments using a formal, competitive solicitation process.¹⁴ A non-competitive procurement may also be used if a sole-source justification is approved by the County's Contract Review Committee.¹⁵

However, WUD asserted to the OIG staff that the signs were procured from a public entity¹⁶ contractor - BUP. A public entity procurement does not require public solicitation, nor does it require justification as a non-competitive procurement.

¹¹ COMCOR 11B.04.01.05.4.3

¹² COMCOR 11B.00.01.03.3.11; 11B.00.01.05.2; 11B.00.01.05.4.2; and 11B.00.01.09.2

¹³ $38,684.68 \times 3 = 116,054.04$. A May 2015, Change Order and Proposal supporting the February 2015 Invoice contained a \$6,847 change order and \$1,360 discount for the cost of the sign that adjusted the final contract value to the previously indicated \$121,541. ($116,054.04 + 6,846.52 - 1,360.08 = 121,540.48$)

¹⁴ COMCOR 11B.00.01.04.1.1; 11B.00.01.04.1.2; 11B.00.01.04.1.3; and 11B.00.01.04.1.5; Procurement restrictions and criteria unique to the intended purchase may, in some cases, limit some source selection methods, or authorize use of others.

¹⁵ COMCOR 11B.00.01.04.12.2(a)

¹⁶ County Code §11B-1 and COMCOR 11B.00.01.02.4.77 identify a public entity to be: 1) the federal government; 2) a state government and any of its agencies; 3) any political subdivision of a state government and any of its agencies; 4) any board, commission, or committee established by federal, state, or local law; 5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and 6) any other entity that is (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefiting an entity under paragraphs (1) through (5).

Findings & Recommendations

A County procurement over \$100,000 does require a contract signed by the vendor, department head, and county attorney; Risk Management approval of insurance; OoP review and execution of the contract; and requisition and encumbrance of funds sufficient for the procurement.

WUD did not adhere to any of these requirements.

Asserting public entity contracting

WUD asserted to OIG staff that the sign procurement was from BUP as a public entity contractor.

The \$101,543 balance due for the three Gateway Signs was paid in June, 2015 to the Sign Fabricator by BUP, who WUD asserted to OIG staff “was used as a contractor on our behalf to purchase the signs as allowed by legislation”. “This legislation has historically been interpreted to allow urban districts to utilize BUP for activities such as this.”¹⁷ (The Office of the County Attorney has opined that BUP is a public entity.¹⁸)

It does not appear, however, that BUP was engaged by WUD as a contractor in the procurement of the Gateway Signs. We asked for a copy of a contract, agreement, memorandum of understanding, or another similar document between WUD and BUP that authorized BUP to contract with the Sign Fabricator for the Gateway Sign. WUD indicated it had provided the OIG with all documentation that exists (which did not include the requested agreement), and were directed to authority under County Code §68A-9, (a) & (b) that governs urban district corporations.

WUD appears to have bound the County to an implied contract with the Sign Fabricator when it paid the February 3 and May 4, 2015 deposit invoices toward the invoice-stated "Contract Amount". WUD relied upon the cost, location, and specifications for the three signs that was set forth in the proposal and change order that WUD received from the Sign Fabricator.

The Sign Fabricator offered the three signs in a proposal addressed to WUD per terms and substance mutually agreed to between the WUD and the Sign Fabricator. WUD accepted the delivery of the signs and provided payment of the agreed price as consideration for the Sign Fabricator’s work, either directly, or through arrangement with BUP.

¹⁷ County Code § 11B-4(a)(11) – “Exemptions. This Chapter, other than Article XII [Ethics in Public Contracting], does not apply to any other procurement exempted from this Chapter by another law.” As an urban district corporation, BUP could enter into a non-competitive contract with the County, and be exempt from County Code Chapter 11B, Contracting and Procurements; § 68A-10(g)(2) - Requires that BUP’s bylaws provide for competitive procurement for goods and services with reasonable public notice.

¹⁸ County Code § 11B-41 County Code provides that the “County may without competition enter into a contract for the procurement [use or sale] of goods, services, or construction, with a public entity when it is in the best interest of the County.”; February 8, 1995 memorandum from Assistant County Attorney Richard H. Melnick; Carrizosa, Natalia *2013 Evaluation of the Bethesda Urban Partnership*, Montgomery County Office of Legislative Oversight, Report #2014-1, October 29, 2013 The County Attorney concluded that an urban district corporation is a “public entity” under County procurement laws, which allows the County to enter into a contract with an urban district corporation without competition.

Splitting a procurement and charging an inappropriate account code to avoid detection

The Sign Fabricator's final invoice consolidated all work and payments under a single job valued at \$121,541. By splitting a procurement into three transactions, each of which was processed in a manner that avoided detection, WUD obfuscated the larger \$121,541 procurement that should have been managed by the Office of Procurement.

WUD processed and directly paid the two \$9,999 deposit payments as Direct Purchases. COMCOR provides that a Department Head may authorize use of a Direct Purchase with a total value of no more than \$10,000.¹⁹ When the need for products or services occur within a reasonable time frame that would allow consolidation of the procurement, the purchase must be consolidated - it may not be subdivided or split to circumvent the procurement limitations of a Direct Purchase.²⁰

The third payment, a \$101,543 balance paid by BUP (a payment which WUD asserted to be a public entity procurement) was reimbursed by WUD.

The balance due reimbursement, processed as a routine charge to the "Sidewalk Repairs Urban Districts" account for "Other Non-Professional Services" provided by BUP, was not detected to be part of the larger procurement.

COMCOR indicates that, by signing each Request for Payment form, the WUD Department Head was certifying that the purchase was for a complete and distinct item or service, not related to another.²¹

These three payments were not identified by the Department of Finance as possible split or duplicate payments. Nor were the two Direct Payments detected to be deposits toward a contract with a total value requiring an additional level of review and approval by the OoP.

Recommendation 1

Management should hold WUD managers accountable for failing to observe the County's procurement regulations and guidelines, and take appropriate remedial actions.

¹⁹ COMCOR 11B.00.01.04.1.9

²⁰ COMCOR 11B.00.01.04.1.9.2

²¹ COMCOR 11B.00.01.04.1.9.3(c)(4).

Financial Mismanagement

Finding 2: WUD management did not properly manage some public funds.

Management of the WUD procured the third Gateway Sign in 2015 not because of an immediate need, but rather due to the availability of funds to do so. The handling of the procurement as a split among three transactions provides the appearance that management went out of its way to hide what might otherwise be a questionable purchase of the third Gateway Sign - questionable because there was no immediate need evident.

This action suggests wasteful use of funds that could have been used for other program needs, or if not needed, returned to the County treasury unexpended.

Recommendation 2

Management should hold WUD managers accountable for the mismanagement of public funds and take appropriate remedial actions.

Opportunity for Circumvention of Purchasing Laws

Finding 3: County procurement regulations and guidelines provide ambiguous guidance for public entity procurements.

The absence of specific public entity procurement guidance provided an opportunity for WUD to pursue Gateway Signs purchasing activities that were inconsistent with County Code and COMCOR.²²

County Code allows intergovernmental procurements through a cooperative purchasing agreement with another public entity; through a non-competed contract made directly with another public entity; or through a non-competed contract bridged directly to another public entity's existing third-party contract ("piggybacking").²³

²² Chapter 11B of the County Code establishes the laws that govern the procurement of goods, services, or construction by a department, office, or agency of the County. Chapter 2A of the County Code provides for the adoption of regulations to implement or enforce a law. Regulations pertaining to procurement activities are contained in Chapter 11B of COMCOR.

²³ County Code §11B-40 thru §11B-42

Public entity procurements are identified as one of COMCOR's 15 source selection methods²⁴, and are to be used when it is in the best interest of the County to obtain goods, services, or construction from those available within the public sector. A public entity procurement does not require public solicitation, nor does it require justification as a non-competitive procurement. A public entity procurement must be cost effective.

COMCOR provides specific guidance to address the documentation requirements for 12 of its 15 source selection methods, and specific procedural guidance for seven. There is no specific documentation or procedural guidance provided for public entity procurements.

Bethesda Urban Partnership is a public entity, meeting County Code's criteria as a non-taxable corporation incorporated by a political subdivision of a state government for the exclusive purpose of supporting or benefiting that political subdivision.²⁵ BUP's standing as a public entity was confirmed in a 1995 memorandum issued by the Office of the County Attorney.²⁶

In the matter considered in County Attorney's 1995 memorandum, BUP provided landscaping services for a County facility in the Bethesda Urban District. This was determined by the County to be in the best interest of the county, both from a cost effectiveness and resources standpoint. No such determinations were provided to us by WUD regarding this procurement. As a result, it appears that in this procurement BUP may have acted as a conduit agent through whom another County department engaged in a third-party procurement not subject to review by the Office of Procurement (OoP).

COMCOR and the *Procurement Guide* direct using departments to prepare public entity procurements for issuance by the Director of the OoP. For a procurement greater than \$100,000, general guidance within COMCOR requires a contract (signed by the vendor offering the goods or service, department head, and county attorney); insurance approved by Risk Management; review and execution of the contract by OoP; and an encumbrance of funds sufficient for the procurement.

WUD did not observe these general procurement requirements, asserting to OIG staff its understanding that legislation allowed it to direct procurements to BUP. Based upon that understanding of public entity procurements, WUD did not prepare a contract, no insurance review was conducted, there was neither review nor approval by OoP, and there was no encumbrance for the full amount of the procurement at the time the first of the three payments was made.

²⁴ COMCOR 11B.00.01.04.1.14

²⁵ COMCOR 11B.00.01.02.4.77(6)

²⁶ February 8, 1995 memorandum from Assistant County Attorney Richard H. Melnick. The memorandum addressed whether the Bethesda Urban District (the predecessor to BUP) could enter into a non-competitive public entity procurement, eliminating the need for public solicitation. The Division of Parking within the Department of Transportation sought to contract with the BUP to perform landscaping and maintain grass and tree areas in County owned parking lots within the Bethesda Urban District. County Code §68A(9) authorizes BUP to enhance and maintain streetscapes and provide additional street scape amenities. It also authorizes BUP to coordinate retail marketing and signage within if district, and provide any authorized service to another Corporation or urban district.

Findings & Recommendations

While we did not find evidence during our review of this procurement to either determine or suggest embezzlement of public funds had occurred, the purchasing methods used by WUD exposes vulnerabilities and provides a road map that others may follow should they choose to do so. Such window of opportunity should expeditiously be closed by Management.

As the County creates additional private non-profit corporations (the Montgomery County Economic Development Corporation being one recent example), more opportunities could arise for County departments and agencies to use another public entity to fulfill procurement needs.

It is important that public entity procurements not circumvent the intent of the County's purchasing laws, especially if the authorizing legislation for the public entity – as was the case with Bethesda Urban Partnership - grants exemption from the procurement requirements of County Code and regulations.

Recommendation 3

COMCOR and the *Procurement Guide* should provide the specific and adequate guidance necessary to ensure that public entity procurements observe the requirements intended by the purchasing laws of the County.

Comments on the CAO Response

The Montgomery County Chief Administrative Officer (CAO) agreed that WUD management should have demonstrated better documentation and support of procurement actions and that Department of Finance authorization should have been received before any advance payments for the procurement of goods and/or services were made. However, the response appears to rationalize the actions of WUD management in this procurement.

As stated in our report, initial sign negotiations were between WUD and the Sign Fabricator. BUP became involved only after it was evident that the cost for the signage would exceed the \$100,000 County threshold for competitive bidding. This appears to have been a purposeful thwarting of management controls. By citing a legitimate streetscaping and street maintenance public entity contracting authority, WUD circumvented Office of Procurement oversight.

Although changes to State Highway Administration jurisdictional gateway signing guidelines may have prevented the new signs from being installed in the same State property locations as the original signs, it is not clear why these restrictions were not identified prior to purchasing the signs.

WUD's inaction to install the third sign during the 1 ½ years following procurement demonstrates that the third sign was not needed at the time of purchase.

We agree that Office of Procurement review of existing guidance and the Contract Administrator training program for clarification or update would be beneficial.

The CAO's response is included in its entirety in Appendix A.²⁷

²⁷ In his response, the CAO references report OIG-17-008, which was the number assigned to our confidential final draft report. Due to the extended time between the June 19th issuance of that draft report and the CAO's August 2nd response, we are issuing our final report in the 2018 reporting cycle and have renumbered the report as OIG-18-001.

Appendix A: Chief Administrative Officer's Response



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

August 2, 2017

TO: Edward L. Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: Response to Confidential Final Draft: Improper Procurement of Gateway Signage by the Wheaton Urban District, Report # OIG-17-008

Attached please find our response to Confidential Final Draft: Improper Procurement of Gateway Signage by the Wheaton Urban District, Report # OIG-17-008.

Recommendation 1: Management should hold WUD managers accountable for failing to observe the County's procurement regulations and guidelines, and take appropriate remedial actions.

CAO Response: We concur that WUD management should have demonstrated better documentation and support of procurement actions and that Department of Finance (Finance) authorization should have been received before any advance payments for the procurement of goods and/or services were made.

The County Council included funds in the FY14 operating budget toward replacement of the five existing Wheaton signs, which were weathered and aging, and which the Wheaton Urban District Advisory Committee had been advocating to be replaced. As the amount added to the budget was ultimately insufficient to replace all five signs, WUD management decided to replace only three of the signs at that time.

Additionally, since the County procures certain streetscaping and street maintenance services from the Bethesda Urban Partnership (BUP), WUD management chose to use BUP to assist in the procurement of the three gateway signs. However, not all three gateway signs could be installed after the purchase. The State Highway Administration (SHA) jurisdictional gateway signing guidelines had changed since the original signs had been placed, preventing the new signs from being installed in the same State property locations as the original signs. This resulted in the need to identify new locations. To date, WUD management has researched several alternative locations for the third gateway sign, has been unable to identify the most appropriate location, and is continuing the research and outreach.

Of particular significance in this matter is that the guidelines contained in the Public Entity Procurement Checklist, Office of Procurement (Procurement) Form PMMD-108 (see Attachment) were not followed with the purchase. Although WUD management had determined that the purchase was in the best interest of the County, as provided for in Montgomery County Code (MCC) §11 B 41, WUD management did not explicitly comply with other provisions of the checklist. Had these guidelines been followed, the terms of the agreement between the County and BUP would have been clearly documented, including the

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240-777-2550 • 240-777-2518 FAX
www.montgomerycountymd.gov

montgomerycountymd.gov/311  Maryland Relay 711

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justification for non-competitive procurement, description of the goods, and dollar value of the procurement, in addition to other terms and authorizing signatures.

WUD management will take several corrective measures to address this recommendation. They will ensure that appropriate WUD staff take the Contract Administrator training and ensure that public entity procurements are subject to documented and approved rationale and justification. They will also ensure that public entity procurements are executed using the Procurement Public Entity Procurement Checklist and will work with the Office of the County Attorney (County Attorney) and Finance to implement the requirements of the checklist.

Recommendation 2: Management should hold WUD managers accountable for the mismanagement of public funds and take appropriate remedial actions.

CAO Response: We believe this recommendation is addressed in our response to Recommendation #1. We will ensure that current WUD management take appropriate action going forward to work with Procurement, the County Attorney, and Finance, as appropriate, for all future procurement-related matters and to ensure the proper and most efficient management of public funds.

Recommendation 3: COMCOR and the Procurement Guide should provide the specific and adequate guidance necessary to ensure that public entity procurements observe the requirements intended by the purchasing laws of the County.

CAO Response: County procurement regulations and guidelines currently provide direction on the use of public entity procurements. Montgomery County Code § 11B-41 states that the County may enter a non-competitive contract with a public entity. The types of federal, state, and local entities which may be eligible for public entity designation are found within Montgomery County Code § 11B-1. In addition, and as referenced in response to Recommendation #1, Procurement has provided guidance and support for these purchases through the publication of a Public Entity Procurement Checklist. This checklist, maintained on the Procurement intranet site, provides step-by-step guidance to using departments that enter into public entity contracts, including the requirement of a formally documented Memorandum of Agreement that includes specific terms and contains specific authorizing signatures.

Procurement will review its existing guidance, and the content of the Contract Administrator training program, to determine if any clarification or updates regarding public entity contracting is warranted.

If you have questions, please contact Fariba Kassiri, Assistant Chief Administrative Officer, at (240) 777-2512 or Fariba.Kassiri@montgomerycountymd.gov.

TLF:imd

Attachment

c: Fariba Kassiri, Assistant Chief Administrative Officer
Alexandre A. Espinosa, Director, Department of Finance
Cherri Branson, Director, Office of Procurement
Marc Hansen, County Attorney, Office of the County Attorney
Luisa Montero-Diaz, Director, Mid-County Regional Service Center

Attachment

PUBLIC ENTITY PROCUREMENT CHECKLIST

Public Entity Definition:

- (1) the federal, state and local governments or their agencies; (2) boards, commissions, or committees established by a federal, state, or local law; (3) government organizations or associations of the federal government, state governments, or political subdivisions of state governments; or (4) any other entity that both qualifies as a not-for-profit corporation under the provisions of the United States Internal Revenue Code and which is incorporated by one of the preceding entities for the exclusive purpose of supporting or benefiting a public entity. See Chapter 11B, Montgomery County Code.

CHECKLIST

- Memorandum signed by the Department Head or designee which includes:
 1. Description of goods or services to be procured
 2. Total dollar value of the procurement
 3. Status of the public entity (see definition above)
 4. Contract Term
 5. Statement that the agreement with the public entity is in the best interest of the County
 6. Statement that the procurement is cost effective
 7. ORACLE requisition #.

- One original and two copies of the Agreement with the following signatures:
 1. Department Head
 2. County Attorney
 3. Authorized Public Entity Representative.

- Risk Management approved insurance certificates if applicable.

- Bonding (Performance and/or Labor Material), if applicable.

Appendix B: Objectives, Scope, & Methodology

The objective of our audit was to identify possible improper payments and weak controls in the 2015 procurement of three monument-style signs for the gateway entrances to Wheaton.

We interviewed Department of Finance accounts payable managers and supervisors to obtain an understanding of the County's accounts payable processes. We reviewed County law, County regulations, department policies and procedures, and conducted an internet search of publicly available information.

We analyzed available vendor invoices, authorized approvals, general ledger posting instructions, and processing policies & procedures provided by the accounts payable section of the Department of Finance.

The Wheaton Urban District provided procurement supporting documents, explanations, and answers to our inquiries and requests.

Our audit was conducted from January to April 2017 in accordance with *Government Auditing Standards* issued by the U.S. Government Accountability Office and *Principles and Standards for Offices of Inspector General* issued by the Association of Inspectors General.

We wish to acknowledge the cooperation and assistance extended to us during this audit by the staffs of the Department of Finance Accounts Payable Section, the Office of Procurement, and the Wheaton Urban District.